

## 2003 DRAFTING REQUEST

### Bill

Received: 09/17/2003

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Sheldon Wasserman (608) 266-7671

By/Representing: Joe Hoey

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters:

Subject: Dom. Rel. - paternity  
Dom. Rel. - miscellaneous  
Courts - civil procedure  
Courts - evidence

Extra Copies:

Submit via email: YES

Requester's email: Rep.Wasserman@legis.state.wi.us

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Prohibiting refusal to order genetic tests if mother or her husband desires to rebut the presumption of paternity

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### Instructions:

See Attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 09/17/2003	kgilfoy 09/17/2003		_____			State
/1			rschluet	_____	sbasford	mbarman	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			09/18/2003	_____	09/18/2003	09/23/2003	

FE Sent For:

&lt;END&gt;

↳ At  
Intro.

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/?	pkahler 09/17/2003	kgilfoy 09/17/2003					State
/1			rschluet		sbasford		

09/18/2003 09:06:36 AM

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			09/18/2003 _____		09/18/2003		

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&lt;END&gt;

09/17/2003 01:08:32 PM

Page 1

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/?	pkahler	11-9/17 Krug					

FE Sent For:

  
<END>

9-17

phone → Joe Hoag (Rep Wasserman)

draft sub to AB17 (S0169/1)  
as a bill

# RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman (or Lynn E. in his absence)

(Request Made By: PJK) (Date: 9/17/03)



☐ Please transfer the drafting file for

2001 LRB \_\_\_\_\_ to the drafting file

for 2003 LRB \_\_\_\_\_

☒ The final version of the 2001 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2001 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

☒ For research purposes, because the 2001 draft was incorporated into a 2003 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2003 drafting file. This request form will be inserted into the "guts" of the 2003 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

— OR —

☒ Please copy the drafting file for

2003 LRB 50169/1 <sup>(the whole thing)</sup> and place it in the  
(include the version)

drafting file for 2003 LRB-3297

☒ For research purposes, because the original 2003 draft was incorporated into another 2003 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2003 drafting file. This request form will be inserted into the "guts" of the new 2003 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

☒ The original drafting file will then returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.



State of Wisconsin  
2003 - 2004 LEGISLATURE

- 3297/  
LRB: [initials]  
PJK: [initials]

STET

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2003 ASSEMBLY BILL 17

Gen. Asst.

1 AN ACT *to renumber* 767.458 (1m); *to amend* 767.458 (1) (c), 767.458 (1) (d) and  
2 891.39 (1) (a); and *to create* 767.458 (1m) (b) and 891.39 (4) of the statutes;  
3 **relating to:** ordering genetic tests when a child's mother or her husband  
4 desires to rebut the presumption of paternity.

***Analysis by the Legislative Reference Bureau***

Under current law, a man who was married to the mother of a child when the child was born or conceived is presumed to be the father of the child. The man may bring an action or a motion in another action, such as a divorce, to rebut that presumption. The presumption is rebutted if the results of genetic tests show that another man is not excluded as the father of the child and the probability that the other man is the father is 99 percent or higher. Current law also provides that in a paternity action brought by a man alleging that he, not the mother's husband, is the father of a child, a judge or court commissioner may refuse to order genetic tests and dismiss the action if, upon the motion of a party or guardian ad litem, the judge or court commissioner determines that it is not in the child's best interest to determine whether a man other than the mother's husband is the father.

This ~~substitute amendment~~ provides that a judge or court commissioner may not refuse to order genetic tests or refuse to admit the results of the tests into evidence if, before judgment is entered in an annulment, divorce, legal separation, custody, or paternity action, the child's mother or the man who is presumed to be the

bill



bill

father of the child because he is the mother's husband desires to rebut the presumption that the husband is the father. The ~~statute amendment~~ also provides that the provision under current law that sets out the bases for reopening judgments and orders applies to a motion to reopen a divorce or legal separation judgment or a judgment or order for legal custody or child or family support on the basis that a presumption of paternity is rebutted.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill. ✓

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 767.458 (1) (c) of the statutes is amended to read:

2           767.458 (1) (c) Except as provided under sub. (1m) (a) and s. 767.463, the  
3 respondent may request the administration of genetic tests which either  
4 demonstrate that he is not the father of the child or which demonstrate the  
5 probability that he is or is not the father of the child;

6           **SECTION 2.** 767.458 (1) (d) of the statutes is amended to read:

7           767.458 (1) (d) Except as provided in subs. (1m) (a) and (2) and s. 767.463, the  
8 court will order genetic tests upon the request of any party; and

9           **SECTION 3.** 767.458 (1m) of the statutes is renumbered 767.458 (1m) (a).

10          **SECTION 4.** 767.458 (1m) (b) of the statutes is created to read:

11          767.458 (1m) (b) Notwithstanding par. (a), if either the woman or the husband  
12 desires to rebut the presumption under s. 891.41 (1) that the husband is the father  
13 of the child, the court or circuit or supplemental court commissioner may not refuse  
14 to order genetic tests and ~~refuse~~ to admit the results of the genetic tests into  
15 evidence.

may not

16          **SECTION 5.** 891.39 (1) (a) of the statutes is amended to read:

17          891.39 (1) (a) Whenever it is established in an action or proceeding that a child  
18 was born to a woman while she was the lawful wife of a specified man, any party

1 asserting in such action or proceeding that the husband was not the father of the  
2 child shall have the burden of proving that assertion by a clear and satisfactory  
3 preponderance of the evidence. In all such actions or proceedings the husband and  
4 the wife are competent to testify as witnesses to the facts. The court or judge in such  
5 cases shall appoint a guardian ad litem to appear for and represent the child whose  
6 paternity is questioned. If either the husband or the wife desires to rebut the  
7 presumption of paternity under s. 891.41 (1) before the entry of a judgment in an  
8 action affecting the family under s. 767.02 (1) (b), (c), (d), (e), or (L), the court may  
9 not refuse to order genetic tests ~~refuse to admit the results of the genetic tests into~~  
10 evidence. Results of a genetic test, as defined in s. 767.001 (1m), showing that a man  
11 other than the husband is not excluded as the father of the child and that the  
12 statistical probability of the man's parentage is 99.0% or higher constitute a clear  
13 and satisfactory preponderance of the evidence of the assertion under this  
14 paragraph, even if the husband is unavailable to submit to genetic tests, as defined  
15 in s. 767.001 (1m).

and may not

16 **SECTION 6.** 891.39 (4) of the statutes is created to read:

17 891.39 (4) Section 806.07 applies to any motion to reopen a judgment of divorce  
18 or legal separation or an order or judgment for legal custody or child or family support  
19 on the basis that the man presumed to be the father of a child under s. 891.41 (1) is  
20 not the child's father.

21 (END)

**Barman, Mike**

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**From:** Hoeyx, Joseph  
**Sent:** Tuesday, September 23, 2003 11:30 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-3297/1 Topic: Prohibiting refusal to order genetic tests if mother or her husband desires to rebut the presumption of paternity

It has been requested by <Hoeyx, Joseph> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3297/1 Topic: Prohibiting refusal to order genetic tests if mother or her husband desires to rebut the presumption of paternity